



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: **201640019**  
Release Date: 9/30/2016

Date: July 7, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-07, 501.32-01, 501.33-00

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

**Date:**  
May 12, 2016  
**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

- B = Date
- C = State
- D = Date
- E = Program
- F = Program
- H = Individual

**UIL:**

- 501.03-07
- 501.32-01
- 501.33-00

p dollars= Amount  
q dollars= Amount

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

**Issues**

Do you fail to qualify for exemption under section 501(c)(3) of the Code? Yes, for the reasons described below.

**Facts**

You were formed as a corporation on date B in the state of C. Your Articles of Incorporation indicated you were a nonprofit corporation whose purpose is helping wrongfully convicted people.

You amended your Articles of Incorporation on D. The amended purposes indicate you shall be operated exclusively for educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code. The Articles also state your purpose is to address social issues, educate, and help create bridging opportunities for inmates and their

families. In addition, they indicate you will assist children and family of incarcerated individuals to cope with the absence of their loved ones, while encouraging them to become productive members of society and social agents of change that they desire to see within their communities. Furthermore, the Articles state you will help raise legal funds and advocate for wrongly convicted inmates.

You were formed to raise funds to pay the legal fees of H, who is the brother of your treasurer. You have to date raised p dollars for H's appeal. In addition, you have an informational website which primarily focuses on H's case and the circumstances leading to his conviction. Your corporate name and H's name are also very similar.

You explained that you were formed out of a desire to help those wrongly convicted inmates such as H because it was discovered there are several others like him who were wrongly convicted but do not have the resources to pay legal fees. Your program of E subsequently evolved, whose goal is to raise funds that will go towards legal fees for those wrongly convicted. As part of E you want to:

- Ensure every person has the opportunity to pursue justice.
- Gather community support around those wrongly convicted inmates.
- Financially contribute to the legal needs of those wrongly convicted.
- Act as an advocate for the voiceless.

In addition to H's sister, you have three other board members and each has either a friend or family member who was wrongly convicted. You explained that your selection process for choosing recipients consists of an attorney or paralegal, who will be members of your board, conducting research to determine if the individual has been wrongly convicted. The findings will be presented to your board, which will approve one recipient for services. Then you will create a campaign around the particular individual case. The campaign will include making the community aware of the individual case and fundraising for the inmate's legal defense. You will only conduct fundraising events for one selected individual at a time. You later said that you will not contribute any more than q dollars for legal fees per approved inmate.

Your second program is F whose goal is to encourage and assist children under the age of 21. This involves assisting inmates and their families in building healthy relationships by organizing group visits to state and federal prisons, facilitating and encouraging group discussions among families of incarcerated individuals.

To this end, you will organize group visits to state and federal prisons, conduct group discussions to encourage the youth to see different options and opportunities they have available besides crime, violence and juvenile recidivism, and family events. You will:

Meet once per month for two hours to participate in workshops or take trips to state or federal prisons

- Develop personal, individualized relationships with young people who are children of incarcerated parents
- Hold monthly group discussions so that youth can learn they have a support system of educators, community members and other youth who understand the issues that arise by having an incarcerated parent
- Have writing workshops to encourage literacy and regular communications with inmates
- Develop relationships with the community, community leaders as well as any other organization that is also looking to bring peace to the city

- Provide transportation to state and federal prisons every six weeks so that families can visit with each other, and
- Create opportunities for youth who have overcome life obstacles to become role models for higher risk peers.

You state that F represents 50% of your time and effort.

Grants, dues and proceeds from fundraising events will be your sources of financial support. You estimate over 75% of your program and fee expenses will be for the program E.

## Law

Section 501(c)(3) of the Code provides, in relevant part, exemption from federal income tax for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations explains that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. It is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 67-367, 1967-2 C.B. 188, states a nonprofit organization whose sole activity is the operation of a "scholarship fund" plan for making payments to pre-selected, specifically named individuals designated by subscribers does not qualify for exemption because it is serving private interests rather than public charitable and educational interests under Section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. C.I.R., T.C. Memo. 1986-348, the Tax Court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders,

was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The Court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care for their family member.

### **Application of Law**

You are not described in section 501(c)(3) of the Code because you fail the operational test as per Section 1.501(c)(3)-1(a)(1) of the Regulations.

You do not meet the provisions in Section 1.501(c)(3)-1(c)(1) of the Regulations because you were formed and are operated to raise funds to pay for H's legal expenses. Although you plan to help other people in the future, your primary purpose is to raise funds to pay for the legal expenses of H. This is evidenced by the fact you were created by H's sister and named after H. These facts show you were formed to further private purposes not public.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. You are operating for private interests of H and his family rather than public interests. For example:

- Your website is focused on the circumstances that led to H's conviction.
- Your corporate name and H's name are very similar.
- H is the first and only beneficiary of your fundraising program.

You are like the organization described in Revenue Ruling 67-367. To date, H is the only beneficiary of your fundraising campaign. The details concerning H's case and his conviction are the primary focus of your website. You are also named after H. These facts illustrate you were formed to benefit a preselected, designated individual which shows you are serving private interests precluding exemption under Section 501(c)(3).

You are like the organization in Better Business Bureau v. Commissioner. Although you may have some charitable and educational purposes, the presence of non-exempt private purposes of paying a pre-selected individual's legal expenses and fundraising on his behalf precludes exemption under section 501(c)(3).

Similar to the organization in Harding Hospital, Inc. v. United States, you have the burden of proving that you satisfy the requirements for tax exemption. You have failed to prove that you are not operating for substantial non-exempt purposes.

You are similar to the organization described in the court case Wendy L. Parker Rehabilitation Foundation, because you were formed to pay the legal expenses for a preselected individual. Like this organization, you are serving the private benefit of an individual and family by paying these expenses and relieving him and his family of their financial obligation.

### **Conclusion**

You do not qualify for tax-exemption under IRC section 501(c)(3) because you are operating to raise funds for the benefit of a designated individual. You therefore are serving substantial private rather than public or charitable interests.

### **If you don't agree**

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

**For authorized representatives:**

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

**Where to send your protest**

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

**If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at [www.irs.gov/formspubs](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892